

# Lawyers and Diplomats

by Acting Secretary Ball<sup>1</sup>

Not long ago a European friend of mine, upon learning that I had spent most of my career in the practice of law, observed that I was a migrant from an old profession to an older one. When I questioned this remark, he referred me to a classic debate involving a lawyer, a doctor, an engineer, and a diplomat.

The lawyer started the argument—as lawyers occasionally do—by asserting that the law was the oldest profession. As evidence to support this claim, he cited the Bible—the Book of Genesis—where it is recorded that Cain murdered his brother Abel. If there was a murder, the lawyer contended, there had to be a trial. If there was a trial, there had to be a lawyer.

This argument did not persuade the doctor, who observed that even earlier in the Book of Genesis a rib had been removed from Adam's side. Surgery of this kind, he said, necessarily required the services of a doctor.

But, contended the engineer, even before Adam appeared on the scene, the Bible states that the Lord created the world out of chaos—a feat requiring the most brilliant engineering skill.

And at this point the diplomat ended the controversy by remarking: "You overlook one point, gentlemen. After all, who created chaos?"

In spite of the relation between murder and chaos, the bond between law and diplomacy has not always been acknowledged or applauded. An 18th-century French authority on diplomatic matters, François de Callières, wrote:

The training of a lawyer breeds habits and disposition of mind which are not favorable to the practice of diplomacy. The occupation of a lawyer, which is to split hairs about nothing, is not good preparation for the treatment of grave public affairs in the region of diplomacy.

<sup>1</sup> Address made before the New York Lawyer's Association at New York, N.Y., on Dec. 13 (press release 725).

And this opinion was echoed by that brilliant but caustic English writer and diplomat Sir Harold Nicolson, who stated that, in his judgment, "The worst kind of diplomatists are missionaries, fanatics and lawyers."

Yet, if neither the French nor the British regard the law as the proper training for diplomacy, this view would not appear to reflect the conventional wisdom in America. I take it as no accident that, since 1789, 45 of our 52 Secretaries of State have been members of the bar. One member of that small band of 7 who has not been a lawyer—my distinguished chief and colleague, Dean Rusk—does not conceal the fact that he was studying law when the war intervened. It cut off what would undoubtedly have been a brilliant career at the bar, and it no doubt made him Secretary of State several years sooner.

I am prepared to state quite categorically—although obviously this is in the nature of a self-serving statement made to a preconditioned audience—that the law is, in fact, a first-rate apprenticeship for diplomacy. Certainly the professions require many of the same qualities. Yet there are differences between the demands imposed on the lawyer and on the public official dealing with problems of foreign policy. And the major point of difference can be made quite explicit.

## Foreign Policy Problems Not Self-Contained

Not always, but quite often, the lawyer finds himself in the happy position of being able to consider a problem as self-contained. He can resolve it within its own four walls as a neat and rewarding intellectual exercise. But for the practitioner of foreign policy, particularly if he serves the government of a leading nation, this luxury is never possible.

For in this mid-20th century an interconnected web of tension runs around the globe. Every problem casts a shadow over every other problem, and the whole world can be set agog by what in other days would have seemed remote and isolated incidents—incidents high on Himalayan mountain peaks, deep in African jungles, or in Asian rice paddies, to say nothing about Caribbean islands. Because of the preeminence of the United States, a principal objective of the foreign policy of nations the world over is to influence our attitude toward them or toward their enemies, and their attitudes are of concern to us as well. For America today, at the center of free-world affairs, each problem of foreign policy flows on many levels at once, each opens the way to countless contingencies, each directly or indirectly affects the interests of obscure parties in distant places. We are forced, in the nature of things, to see every problem through a glass darkly, a glass that, like a many-sided prism, has dozens of subtly merging facets.

I suspect that this is familiar enough to you. Yet I feel compelled to emphasize it again, since it is the basic explanation for much of the failure of understanding, the failure of communication, between the American people and the officials responsible for the conduct of their foreign policy.

Most problems of foreign policy enter the public mind through the medium of crises, that is, with one or two elements cast into stark and dramatic relief. But, in foreign affairs, to concentrate only on what is dramatically prominent is to repeat the fallacy of the blind men who formed their separate impressions of an elephant by feeling a different part of the beast's anatomy. As a result, the elephant appeared, to the different observers, as a snake, a saber, a tree, a house, and a rope. But in the presence of a problem of foreign policy, we must recognize the elephant for what it is and deal with the whole animal. We must make sure that, while we are dodging his tusks, he does not step on us with his foot—and we must keep in mind, too, that in the field of world politics the elephants travel in herds.

Our experience during the recent Cuban crisis illustrates the point. Back in 1898, in a far less complicated world, the United States took direct military action to invade the island and drive out the Spanish. Our decision then was relatively simple to make. The United States was not yet

the leading nation of the world. The interdependence that characterizes modern political life did not exist, nor did the institutions for joint action. There was no cold war. There were no nuclear weapons. The United States could and did act unilaterally, with results with which we are all familiar.

Today we are in quite a different position. We live in a world that is divided against itself, a world half slave, half free. We have diplomatic relations with 108 countries, and we count 42 allies spread around the globe. As one of the two great nuclear powers—and thus a trustee of humanity's fate—we have an obligation to all mankind to prevent the kind of conflict that could result in the incineration of a large part of civilization.

### The Cuban Crisis

Against this background of circumstance and responsibility, how does the Cuban crisis appear?

In its most important aspect it was a confrontation between the vital interests of the United States and the aggressive intentions of the Soviet Union. The Soviet Union had made a reckless move to improve its world power position in both a military and political sense, a move that affected a precarious balance and thus jeopardized the interests of the free world.

But at the same time, of course, the crisis was part of the conflict between the United States and the Castro government, which had permitted itself to be used as a tool for Soviet ambitions.

Yet even in terms of the conflict with Castro, this is an oversimplification. The prime menace of Castroism is the danger of Communist infection of Latin America. It poses, of necessity, a hemispheric problem in which the interests of our partners in the Organization of American States are all engaged. As a consequence it was essential that any response to the threat of Soviet offensive weapons in Cuba be conceived in the framework of our hemispheric obligations and undertaken with the support and participation of the other American states.

Nor could we ignore the interests of our NATO and other allies. No one could be certain of the form or character of the reaction of the Soviet Union to whatever move we might make to eliminate the offensive weapons. No one could be certain that the Soviet Union would confine its reac-

tion to the Western Hemisphere. Our partners in Western Europe and our allies and bases in other parts of the world are included within the target system of Soviet missiles. Apart from treaty considerations, all had a supreme stake in any line of action that might have escalated into nuclear conflict.

And finally we could not approach the crisis without taking account of its impact on the United Nations, which serves as the voice and organized conscience for more than 100 member nations.

#### **"Compound Variables and Multiple Unknowns"**

The problem, therefore, was one of several dimensions, calling for a solution that met and balanced many simultaneous objectives, not one simple objective. The problem was to design the kind of measured response that would remove the threat to the Western Hemisphere and to the political and military balance of the world in a way that:

First, posed a minimum risk to ourselves and our allies;

Second, involved a minimum danger of escalation toward higher orders of violence;

Third, was consistent with our treaty obligations; and

Fourth, did not contravene the principles for which we stood as a nation.

The choice of available response covered a broad spectrum. Possibilities ranged all the way from purely diplomatic action to various forms of direct military action. That broad spectrum offered a large number of possible variations and combinations. There was a time dimension, too.

On the one hand, time was needed for the development of comprehensive intelligence, principally by air surveillance. On the other hand, action was required before the arsenal of Soviet offensive weapons could become fully operational.

We were presented, therefore, with an equation of compound variables and multiple unknowns. No one has yet devised a computer that will digest such raw data as was available to us and promptly print out a recommended course of action. We used the instrument at hand, an ancient but honorable instrument, the pooled judgment and experience of a small group of men consisting, in this case, principally of the 12 officials who constituted

the Executive Committee of the National Security Council. During the epic week of day-and-night effort that preceded the President's speech on October 22,<sup>2</sup> we struggled to solve the problem thrust upon us by applying the honored methods of comparison, debate, and analysis to test the virtues and disadvantages of first one and then another possible solution, with all their innumerable shades and variants.

This process entailed canvassing each possibility, grinding considerations against each other, plotting out each apparent course of action with its possible consequences, step by step. It involved estimates as to the possible reaction of the Soviet Union to each action we might take. In what seemed endless permutations it then meant devising possible counters to each hypothetical Soviet reaction.

At times I had the feeling that we were conducting continuous midnight sessions of the kind with which you and I are familiar—the sessions that take place in the middle of a complex lawsuit. But the stakes were higher and the adversary less predictable. There was no judge, and the jury would be all mankind.

#### **Advantages of Measured Response**

It was not difficult to devise a military plan that would quickly have achieved the elimination of the offensive weapons. But it had to be a plan that did not block the road leading back from the use of force to a political solution. It had also to be a plan that involved the least danger of escalation up an ascending scale of violence.

At the end of the process of analysis, President Kennedy chose, as all the world knows, to take, as the initial step, a consciously measured response—a quarantine interdicting the buildup of offensive weapons in Cuba.<sup>3</sup> That choice had many advantages.

First of all, while involving force it did not involve the immediate use of violence. In fact, it offered the possibilities, which events bore out, of avoiding the use of violence. The Soviet Government was not compelled to respond instantaneously—was not, therefore, compelled to take hasty action without calm consideration of the consequences. The plan put the burden of initiating

<sup>2</sup> BULLETIN of Nov. 12, 1962, p. 715.

<sup>3</sup> For text of proclamation, see *ibid.*, p. 717.

the use of violence on Chairman Khrushchev—who elected not to assume that burden.

Meanwhile lines of communications were opened directly between Washington and Moscow and through the United Nations to permit a political solution, albeit a political solution shaped by our willingness and ability to use force. Involving as it did no abrupt resort to violence, the quarantine gave us time to consult with our allies in the Organization of American States and gain their unanimous support for our action.<sup>4</sup> It gave time for us to advise our friends around the world, time to consult with our NATO allies regarding subsequent steps that might be required.

The quarantine, moreover, defined the struggle clearly as one between the United States and the Soviet Union, lifting it out of its purely Cuban context. In its initial phase it was narrowly directed at the introduction into Cuba of offensive weapons—which was the prime cause of the crisis. But it was a potentially flexible instrument since the proscribed list could be extended to include such items as petroleum, had additional pressure proved necessary. For it must be understood that the quarantine was conceived as only the first move in a complicated strategy, and, while the details of the quarantine were being worked out, preparations were going forward simultaneously to put in readiness a sequence of other coordinated actions if the weapons were not removed as a result of the initial action.

#### **Complexities in Formulation of Policy**

I have described this episode in the Cuban crisis primarily to illustrate the complexities of the problems implicit in the formulation and execution of foreign policy today. In the end one man, the President, had to make the lonely decision to choose the quarantine as the first and crucial step in a larger strategy. But in the development of the alternative plans that were put before him by the Executive Committee, the principal role was played not by any one man but by the process so painfully employed during a week in which all participants, like the Ancient Mariner, grew wiser with the experience. In a real sense—in a sense that I know we, as lawyers, well understand—one can say that the process was the author of the policy. For that reason, among others, speculation

as to particular positions taken by particular participants during particular phases of the process can serve only to mislead and confuse.

#### **Cuban Solution Not a Precedent**

As lawyers we also understand well that the precedential value of a case does not extend beyond its facts. The facts that were presented to us in the Cuban crisis are not likely to be found again in quite the same combination. Cuba is an island only 90 miles off the continental United States; in Cuba, to a greater degree than in almost any place in the world, we had overwhelming local military superiority of every kind. Moreover, this was the only crisis in the nuclear age triggered by genuinely secret intelligence. With advance warning and the opportunity to devise a strategy, we were not required to show our hand in advance. Hence we were able to move with decision along a well-planned line of action.

I do not suggest, therefore, that the particular response developed with respect to the offensive weapons in Cuba will itself be the solution for other problems that will come.

The Cuban crisis, properly viewed, is an incident in a moving stream of incidents that shape relations between the free world and the Communist world, indeed, that shape all international relations. In this stream the Cuban experience stands out: it has caught the attention of the world because it involved the direct confrontation of the two giants—the United States and the Soviet Union.

The experience has been of particular value because in an unambiguous way it has again demonstrated to the world the power and the resolution of the United States and its allies. With equal clarity, it has also demonstrated the restraint and the care with which that power is used.

#### **Changing World Relationships**

The other significance of the Cuban affair is of greater breadth. It has not introduced a millennium or a new era of secure peace. But the events in Cuba, taken together with other events discernible about us, suggest that we may be passing from a period of rigidity in world politics into an era of greater mobility and maneuver. Ever since the war long-term secular trends have been at work beneath the surface of world politics. Those trends are now forcing into the open profound

\* *Ibid.*, p. 720.

changes in the relationships that have become familiar to us.

First there is movement within the Communist bloc. We have long been dimly aware of a widening rift between the two fortresses of Communist power—the Soviet Union and Red China. But within the past few weeks this rift has been made dramatically visible to all. In its attack on India, China has clearly run athwart Soviet policy. And today the theologians of both Communist factions do not hesitate to shout their polemics at each other in public.

In the Western World we are also in the process of transformation. A new united Europe is being built and expanded. Slowly and painfully, but unmistakably, the free world is moving toward a unity that contains great promise for the common endeavors of the United States and its partners in freedom.

We are, at the same time, nearing the end of another long and not always attractive period—the end of Western colonialism. These past 17 years since the end of the World War have seen the dismantling of the great colonial structures—the birth of 46 free countries created out of former colonial dependencies. (And, parenthetically, not one of these has become Communist.) The day is not far off when colonialism will be no more than an historical fact, no longer a continuing source of friction and discontent. As the colonial period closes we shall have large, continuing obligations to the emergent peoples, the new nations struggling to maintain and develop their freedom and achieve a decent standard of living. But we shall have a healthy relationship founded on mutual self-respect. The mortgage to the past will have been paid off, and in the end, if we show the wisdom, sympathy, and generosity that are our heritage, we should have provided a far better chance for peace and stability.

Finally, in this swiftly moving world, we may, before too long, begin to detect the first faint signs of a change for the better in the cold war. From the long view of history, the cold war has had only the briefest life; it has endured so far only a little more than a decade and a half—a mere moment in time. And there is no historical inevitability that fixes it as a permanent aspect of the world scene. On the contrary there is reason to think that tidal forces are at work behind the Iron Curtain as well as on this side.

I hold out no prospect for a safe or easy life. However much we may trumpet, the Iron Curtain will not drop away like the walls of Jericho. I suggest to you only that we are entering a period of profound political change—a period of movement and maneuver in which the pace of events will be quicker, the prizes we seek more nearly within our grasp, and the hazards closer to the surface and more constantly in play.

More than ever before, it will be essential to have steady nerves, to see events in their full perspective, to avoid the extremes of euphoria and despair, and, above all, to keep our sense of historic direction. Amidst the perils of the modern world, the United States must be ready for whatever may come; we cannot afford to discount any possibilities. Still our past experience and our present culture impose upon us certain imperatives. There is an American way. It was not for nothing that our forefathers declared themselves for life, liberty, and the pursuit of happiness; that they settled and cultivated a country that is a continent; that they established equality before the law; that they created high living standards by hard work and set aside broad reaches for education, leisure, and the arts. These continuing accomplishments represent the American contribution to civilization; they are the message we proclaim to the world. And I think we may take it as our chief task and supreme opportunity to show, in the future as in the past, that in America power is used not to play fast and loose with the destinies of mankind but to achieve constructive purpose on the grand scale.

## President Alessandri of Chile Visits Washington

*Jorge Alessandri Rodriguez, President of the Republic of Chile, visited at Washington December 11-13. Following is the text of a joint communique between President Kennedy and President Alessandri released following their discussions on December 11 and 12.*

White House press release dated December 12

For two days, we have had the opportunity for a frank exchange of our points of view on an important number of topics referring to the development of relations between our two countries and the responsibility for their international action at